

May 6, 2019

The Hon. Mitch McConnell  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Hon. Lindsay Graham  
Chairman, Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Hon. Charles Schumer  
Minority Leader  
U.S. Senate  
Washington, DC 20510

The Hon. Dianne Feinstein  
Ranking Member, Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Hon. Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Hon. Jerrold Nadler  
Chairman, Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Hon. Steny Hoyer  
Majority Leader  
U.S. House of Representatives  
Washington, DC 20515

The Hon. Doug Collins  
Ranking Member, Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

The Hon. Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
Washington, DC 20515

The Hon. Bennie Thompson  
Chairman, Committee on Homeland Security  
U.S. House of Representatives  
Washington, DC 20515

The Hon. Ron Johnson  
Chairman, Committee on  
Homeland Security and Governmental Affairs  
U.S. Senate  
Washington, DC 20510

The Hon. Gary Peters  
Ranking Member, Committee on  
Homeland Security and Governmental Affairs  
U.S. Senate  
Washington, DC 20510

Dear Members:

We, the undersigned organizations who advocate for asylum seekers, refugees, immigrants, and children write to urge you and your colleagues to oppose any legislation that would expand the scale or length of immigrant family detention, overturn the child protection policies and laws currently governing the treatment of migrant children in custody, or undermine asylum protections.

In response to historically high numbers of unaccompanied children and family units arriving at our Southwest border seeking protection, this Administration has sought to gut critical due process safeguards in an effort to deter future migration by asylum seekers. These proposals are based on the false premise that due process protections in U.S. law and policy are responsible for the current regional protection and refugee crisis. The children and families coming from El Salvador, Guatemala, and Honduras are fleeing three countries with some of the world's highest levels of violent crime and where they face direct and extreme threats from gangs and criminal organizations, an utter lack of protection from their own governments, and economies that have collapsed for the poorest. Due process protections and minimum standards of detention for children outlined in the *Flores* Settlement Agreement and the Trafficking

Victims Protection Reauthorization Act (TVPRA) have long been and continue to be crucial to saving the lives of children, families, and others seeking protection.

Children and adults escaping violence are not benefiting from a loophole, they are merely seeking humanitarian protection through an immigration process they have a legal right to access. The United States has a long history of protecting the persecuted and a clear obligation under domestic and international laws not to return women, children, and others seeking refuge to places where they fear persecution or children into the hands of traffickers.

The preservation of existing protections that advance the humane treatment of the most vulnerable in our immigration system and fair consideration of their cases for humanitarian relief is critical to upholding these important commitments.

### *Flores*

In its June 20, 2018 Executive Order,<sup>1</sup> the Trump administration made clear that it seeks to turn to family detention as the answer to its policies of separating families apprehended--often while legally seeking asylum--at the border. The Administration has repeatedly sought to modify the 1997 *Flores* Settlement Agreement in order to be able to detain more children with their parents, to do so for longer periods of time, and in conditions that have clearly been demonstrated to be unsafe and inadequate. The *Flores* settlement is grounded in fundamental child protection principles, and aims to ensure that children are not subject to prolonged detention, that if they are detained they are held in appropriate facilities that are not secure and are licensed by a child welfare entity, that they receive appropriate care, and that their due process rights are respected.

Modifying or overturning *Flores* would particularly impact the Department of Homeland Security's use of family detention facilities. Numerous reports and complaints document the extensive concerns over treatment, care, and length of custody in DHS's family detention facilities, none of which are licensed by a child welfare entity and all of which are secure. So inappropriate are the conditions in family detention facilities and DHS's practices concerning family detention that Immigration and Customs Enforcement's (ICE) own Advisory Committee on Family Residential Centers (ACFRC)--a committee of subject matter experts that was formed to independently examine and issue guidance to ICE on how to improve family detention practices--issued as its first recommendation that ICE should discontinue the practice. The American Academy of Pediatrics has similarly found that "children in the custody of their parents should never be detained."<sup>2</sup> Two physicians who work with DHS's Office for Civil Rights and Civil Liberties and have extensively visited family detention centers have also spoken out based on their concerns over the potential expansion of family detention. The physicians found egregious examples of inadequate care that included severe weight loss in children detained in family detention centers as well as "an infant with bleeding of the brain that went undiagnosed for five days."<sup>3</sup>

It is clear, therefore, that any measure that would undermine or overturn *Flores* will result in children being harmed and traumatized.

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<sup>1</sup> *Executive Order: Affording Congress an Opportunity to Address Family Separation*, The White House, June 20, 2018, <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>.

<sup>2</sup> Linton JM, Griffin M, Shapiro AJ, AAP COUNCIL ON COMMUNITY PEDIATRICS. Detention of Immigrant Children. *Pediatrics*. 2017; 139(5):e20170483, at p. 7, <https://pediatrics.aappublications.org/content/pediatrics/139/5/e20170483.full.pdf>.

<sup>3</sup> Miriam Jordan, *Whistle-Blowers Say Detaining Migrant Families 'Poses High Risk of Harm'*, N.Y. Times, July 18, 2018, <https://www.nytimes.com/2018/07/18/us/migrant-children-family-detention-doctors.html>.

## TVPRA

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) represents a significant advance in U.S. anti-human trafficking efforts and was enacted by Congress with bipartisan support after careful review and consideration. Rolling back or eliminating protections within the TVPRA in order to attempt to deter future unaccompanied children from making the journey to the U.S. to seek protection or to accelerate processing for those children already present in the U.S. would drastically undermine child safety and due process.

The TVPRA filled a legislative gap in U.S. anti-human trafficking efforts by bringing all victims, including those formerly precluded from receiving assistance, such as unaccompanied alien children, within the scope of U.S. law and policy. Prior to the TVPRA, many unaccompanied children were summarily returned to Mexico without anyone confirming their nationality or even asking if a return would be safe. Furthermore, children were repatriated without any consideration of their age, and they were repatriated alone without any connection or transfer of custody to a responsible adult. Many children ended up in the hands of dangerous smugglers and traffickers who were waiting for them in their country of origin. The TVPRA addresses this by requiring that children be screened prior to repatriation or return, and by requiring provisions for safe repatriation procedures. Furthermore, the law protects unaccompanied children by ensuring they have a fair chance to tell their story, including providing adequate time to find legal assistance and to make a claim for protection. The TVPRA also ensures due process guarantees for child survivors of trafficking as well as those who may be vulnerable to trafficking or who have additional protection needs. Under this law, children are provided access to courts to ensure their claims for protection are properly adjudicated instead of being summarily returned to potentially dangerous and exploitative situations.

Denying access to protection will not address the current border processing problems. A successful approach will instead address the root causes of migration while facilitating access to protection and investment in improved processing of applications for humanitarian relief.

To this end, we recommend the following measures:

- **Ensure Access to Protection and Expand Protection Systems in Mexico and the Region.** Current policies, including the “Remain in Mexico” program and the use of metering and turn-backs, are preventing children and families from accessing U.S. ports of entry to request protection. Rather than blocking asylum seekers in search of safety, our government should work to strengthen the existing Mexican asylum system and invest in regional refugee processing in neighboring countries such as Belize, Costa Rica, and Panama. The U.S. should also reinstate an expanded Central American Minors Refugee/Parole program to enable children and families to apply for protection in their countries of origin without having to make the dangerous journey to the U.S.<sup>4</sup> These measures should supplement, not replace, access to the U.S. asylum system.
- **Modernize the Ports of Entry.** DHS should ensure that all asylum seekers are treated humanely and are efficiently processed at the ports of entry. Upgrading infrastructure and technology and ensuring adequate staffing at ports of entry not only enables better management of the asylum and

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<sup>4</sup> See USCIS, In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM), <https://www.uscis.gov/CAM>.

immigration process, but also promotes trade and travel, improves border security, and helps to prevent the flow of dangerous drugs into the country.<sup>5</sup>

- **Use Existing Funding to Hire Child Welfare, Medical, and Language Professionals.** In order to humanely receive and process the increasing numbers of families and children arriving to the country, who now make up more than 60% of Border Patrol apprehensions and most often turn themselves in,<sup>6</sup> CBP must use existing funding to hire child welfare professionals at ports of entry and Border Patrol stations. State-licensed professionals specially trained in the screening and care of children and in trauma-informed interviewing -- not uniformed, armed CBP agents -- should evaluate the needs of children and families and conduct all relevant screenings. CBP must also ensure the availability of medical screenings to ensure rapid identification of medical needs and referral for treatment by appropriate medical providers, including those who specialize in pediatric care. Screening and treatment should occur in a parent or child's preferred language through the use of real-time interpretation services, including in indigenous languages.
- **Fund Community-Based Support Services and Proven, Humane Alternatives to Detention.** Child welfare and medical professionals continue to warn that detention -- for any period of time -- is irrevocably harmful for children.<sup>7</sup> Proven and cost-effective alternatives exist and should be expanded. Congress should insist that, *in place of detention*, DHS dedicate more funds to case management programs and other alternatives to detention.<sup>8</sup> These programs save taxpayer dollars and are extremely effective at ensuring compliance with immigration court hearings and even removal.<sup>9</sup> A robust network of non-profit and faith-based organizations is currently providing support services to recently arrived migrants and with government support can quickly mobilize to vastly increase the capacity to serve and house asylum-seeking families, children and adults.
- **Address Root Causes of Migration.** Extreme violence, impunity, political instability, economic deprivation, and food insecurity continue to drive thousands of children and families from Central America. Attempting to close the border or to restrict eligibility for asylum will do nothing to tackle these challenges. The President recently took steps to discontinue aid to the Northern Triangle countries, although federal agencies have acknowledged the importance of such funding in addressing migration from the region.<sup>10</sup> The Administration should immediately reverse its decision and instead embrace a comprehensive approach that directs assistance to addressing gender-based violence and gang violence, combating corruption, reducing structural poverty, and strengthening human rights and the rule of law.<sup>11</sup>

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<sup>5</sup> See, e.g., Curt Prendergast, *Most hard drugs smuggled through legal border crossings*, Arizona Daily Star, May 6, 2017, [https://tucson.com/news/local/border/most-hard-drugs-smuggled-through-legal-border-crossings/article\\_46653d40-7f63-5102-bb38-38da58c06a76.html](https://tucson.com/news/local/border/most-hard-drugs-smuggled-through-legal-border-crossings/article_46653d40-7f63-5102-bb38-38da58c06a76.html).

<sup>6</sup> Adam Isacson, *Commentary: New Migration Numbers at U.S.-Mexico Border Show a Growing Humanitarian Crisis*, Washington Office on Latin America, Mar. 6, 2019, <https://www.wola.org/analysis/new-migration-numbers-us-mexico-border-show-growing-humanitarian-crisis/>.

<sup>7</sup> Devin Miller, *Pediatricians speak out: Detention is not the answer to family separation*, AAP News, July 24, 2018, <https://www.aappublications.org/news/2018/07/24/washington072418>.

<sup>8</sup> National Immigrant Justice Center, *A Better Way: Community-Based Programming as an Alternative to Immigrant Incarceration*, April 2019, <https://immigrantjustice.org/sites/default/files/uploaded-files/no-content-type/2019-04/A-Better-Way-report-April2019-FINAL-full.pdf>.

<sup>9</sup> Women's Refugee Commission, *Backgrounder, Family Case Management Program*, <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-FCMP.pdf>.

<sup>10</sup> Kevin Sieff, *U.S. officials said aid to El Salvador helped slow migration. Now Trump is canceling it*, Wash. Post, Apr. 1, 2019, [https://www.washingtonpost.com/world/the\\_americas/us-officials-said-aid-to-el-salvador-helped-slow-migration-now-trump-is-canceling-it/2019/04/01/5a8ca570-540a-11e9-aa83-504f086bf5d6\\_story.html?utm\\_term=.f2ae9c5f3323](https://www.washingtonpost.com/world/the_americas/us-officials-said-aid-to-el-salvador-helped-slow-migration-now-trump-is-canceling-it/2019/04/01/5a8ca570-540a-11e9-aa83-504f086bf5d6_story.html?utm_term=.f2ae9c5f3323).

<sup>11</sup> See Latin American Working Group, *Washington Office on Latin America, et al., Recommendations for U.S. Engagement to Address Migration from and Displacement within the Northern Triangle of Central America*, 2019, <https://www.lawg.org/wp->

Our organizations are deeply concerned about proposals to modify the protections found in the *Flores* Settlement Agreement and the TVPRA, as well as any legislative efforts that would similarly permit expanded and prolonged detention in inappropriate conditions. We are also alarmed by proposals that would pair rollbacks to *Flores* and the detention of asylum seekers with measures to restrict access to asylum, including heightening the credible fear standard and speeding the processing of asylum claims. We urge you to reject any measures that would weaken critical due process safeguards and access to protection for the most vulnerable.

Sincerely,

ADL (Anti-Defamation League)

Alliance for a Better Utah

American Academy of Pediatrics

American Civil Liberties Union

American Federation of Teachers (AFT)

Americans for Immigrant Justice

Amnesty International USA

Asian Americans Advancing Justice | AAJC

ASISTA

Bethany Christian Services

Catholic Diocese of Salt Lake City

CDWBA The Legal Project, Inc.

Center for Gender & Refugee Studies (CGRS)

Center for Law and Social Policy

Center for the Study of Social Policy

Center for Victims of Torture

Central American Resource Center (CARECEN) - DC

Church World Service

Coalition for Humane Immigrant Rights (CHIRLA)

Coalition on Human Needs

Coalition to Abolish Slavery & Trafficking (CAST)  
Columbia County Sanctuary Movement  
Comunidades Unidas (UT)  
DC-MD Justice for Our Neighbors  
Disabled Rights Action Committee  
Fair Immigration Reform Movement (FIRM)  
First Focus  
Freedom for Immigrants  
Freedom Network USA  
Friends Committee on National Legislation (FCNL)  
HIAS  
Hispanic Federation  
Human Rights First  
Human Rights Initiative of North Texas  
Humanity United Action  
Immigrant Legal Resource Center (ILRC)  
Immigration Hub  
International Rescue Committee (IRC)  
Kids Forward (Wisconsin)  
Kids in Need of Defense  
Latin America Working Group (LAWG)  
Law Foundation of Silicon Valley  
Legal Services for Children  
Lutheran Immigration and Refugee Service (LIRS)  
Mennonite Central Committee U.S. Washington Office  
Mid-South Immigration Advocates  
Migrant and Immigrant Community Action (MICA) Project  
MomsRising  
Mormon Women for Ethical Government (MWEG)  
MOSAIC Inter-Faith Ministries dba Lutheran Social Service (UT)

MoveOn  
National Association of Pediatric Nurse Practitioners  
National Center for Youth Law  
National Council of Jewish Women  
National Immigrant Justice Center  
National Immigration Law Center  
NETWORK Lobby for Catholic Social Justice  
North Country Immigration Support (NY)  
Project Lifeline  
Public Counsel  
Refugees International  
Salt Lake Indivisible  
Saratoga Unites  
Temple Sinai (Saratoga Springs, NY)  
The Advocates for Human Rights  
The Florence Immigrant and Refugee Rights Project  
Unidad Inmigrante  
United We Dream  
U.S. Committee for Refugees and Immigrants (USCRI)  
USC Gould International Human Rights Clinic  
Utahns Against Hunger  
Vera Institute of Justice  
Voices for Utah Children  
Volunteers of Legal Service  
Washington Office on Latin America (WOLA)  
Women's Refugee Commission  
Young Center for Immigrant Children's Rights